

IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT  
DU PAGE COUNTY, ILLINOIS

THE VILLAGE OF LISLE,

Plaintiff,

- vs -

ALEX FRENCH,

Defendant.

No. 21 DT 872  
Ruling

REPORT OF PROCEEDINGS had at the  
hearing of the above-entitled cause, before the  
HONORABLE MICHAEL W. FLEMING, Judge of said Court, on  
the 18th day of June, 2021.

PRESENT:

THE VILLAGE OF LISLE, by  
MS. MICHELLE NORTON,  
Village Prosecutor,

appeared on behalf of The Village of Lisle,  
Plaintiff;

RAMSELL & ASSOCIATES, LLC, by  
MR. JASON KUNOWSKI,

appeared on behalf of Alex French,  
Defendant.

Jillian Doctor, CSR, RPR  
Official Court Reporter  
CSR 084-004809

1 THE CLERK: Alex French.

2 MS. NORTON: Good morning, Your Honor. Michelle  
3 Norton, N O R T O N, on behalf of the Village.

4 THE COURT: Good morning.

5 MR. KUNOWSKI: Good morning, Judge. Jason  
6 Kunowski, K U N O W S K I, on behalf of Alex French.

7 THE COURT: Okay. I apologize for Wednesday. I  
8 understand that you weren't here either, so.

9 MS. NORTON: Oh.

10 THE COURT: But I, not unlike Mr. French, I had  
11 some car difficulties.

12 MS. NORTON: Hopefully you didn't run out of gas.

13 THE COURT: No, I did not.

14 All right. This comes on for ruling. I have  
15 considered the testimony of Officer Wise. I've read  
16 all the case law that's been provided to me. And  
17 unlike Officer Wise, I had the opportunity to look at  
18 this analytically. And the video, I've reviewed the  
19 video twice, and the facts are pretty straightforward.  
20 There is a disabled vehicle on the roadway without its  
21 hazard lights on. And, presumably, Mr. French had run  
22 out of gas. He had gone on his own to get gas, and was  
23 attempting to fuel his car. There is no vehicle in  
24 motion, however, I do think the lack of presence of

1 mind to know that your fuel is low, and also the lack  
2 of putting your hazards on, I think, is, per se,  
3 negligent and also indicia of possible impairment.

4 There is no issue regarding whether or not he  
5 was going to get a citation for improper parking on the  
6 roadway, that was never discussed by Officer Wise. And  
7 unlike the typical traffic situation where there is a  
8 basis for a stop, a seizure, and then some indicia of  
9 impairment, this is a community caretaking situation.

10 And the case that the Prosecution gave me,  
11 People versus McDonough, which is at 239 Ill.2d 260, a  
12 Supreme Court of Illinois case, dealt with a similar  
13 situation where a trooper came upon a vehicle, parked  
14 on the side of the road without any lighting, and  
15 activated its lights for purposes of safety, not for  
16 purposes of initiating a traffic stop. That was  
17 considered a seizure, but also considered an exception  
18 to the 4th Amendment because it was a community  
19 caretaking situation. So the fact that the lights are  
20 on, and Officer Wise did have his lights activated,  
21 does not allow for the defendant's petition to be  
22 granted in that regard. There was an argument made  
23 regarding him taking his driver's license, and that,  
24 per se, is a seizure. That's one of the factors to

1 look at.

2 In the course of the eight and a half minutes  
3 prior to initiating the field sobriety test, there was  
4 conversation between the defendant and the officer,  
5 which I would characterize as friendly banter regarding  
6 his situation. And in spite of the fact that he -- the  
7 officer had his license, it's clear to me that  
8 Mr. French thought he was not being detained because  
9 he was allowed to get into his car twice to attempt to  
10 start the vehicle with no luck. But I think he, in his  
11 mind, thought as soon as he got his car activated, that  
12 he would be able to get his license and proceed on.

13 The two things that I indicate that may be a  
14 basis for impairment and give reason for the officer to  
15 further investigate are then mitigated by the,  
16 approximately, at least seven and a half minutes or  
17 eight and a half minutes of interaction with  
18 Mr. French. He acts -- on the video -- there is  
19 something -- there is no audio, but there is some  
20 conversation because he's interacting with the officer,  
21 and he puts his hands up at some point. And the  
22 officer tells him you don't have to put your hands up.  
23 I can see your hands, you know, relax.

24 When he gets the driver's license, he finds

1 out that he's got a Concealed Carry. So I don't know  
2 what the training is when you have a Concealed Carry,  
3 but I assume if you know you have a gun in the car, you  
4 want the officer to be able to see your hands. And the  
5 officer articulates, you know, he's jittery, there is  
6 something going on here; however, in the entire time  
7 he's with him, there is no objective facts regarding  
8 impairment. He's not stumbling. He's not staggering.  
9 There is no slurred speech. There is weird, I guess,  
10 conversations. There is a couple of sentences where  
11 the defendant breaks off mid-sentence, but there was no  
12 testimony that that is an indication of impairment.  
13 And the friendly banter was, I think, kind of as a  
14 result of the defendant being nervous. He gets in and  
15 out of the car, and he's flicking his hands, which  
16 indicates to me that he spilled gas on his hands. But  
17 when he's putting the gas nozzle into the tank area,  
18 there is no problem with him coordinating that effort,  
19 it's something malfunctioning with the gas can that's  
20 allowing the gas to spill over.

21 And his speech, while there is -- it's --  
22 there is some broken speech, it's not slurred, it's not  
23 mumbled. He has interaction with the officer in giving  
24 him his license. He's in close proximity, and the

1 officer testified very candidly that at that point he  
2 could not detect the odor of alcohol. I think it was  
3 as a result of the fact that there was a lot of gas on  
4 the defendant's hands.

5 When he's asked for his license, he reaches  
6 into his breast pocket, and his wallet is not there.  
7 He finds his wallet in his jacket pocket, and then is  
8 able to retrieve his license and insurance without any  
9 difficulty. I think Officer Wise summed it up prior to  
10 doing the field sobriety test where he says the  
11 circumstances are real weird, and that's a fact. Once  
12 he starts with the -- He then says I'm not going to  
13 call you a liar, I just need to check you out further,  
14 and that's when he initiates the Horizontal Gaze  
15 Nystagmus test. He then is positioned in a different  
16 location where he then detects the odor of alcohol. So  
17 I don't know what the wind direction was, but at that  
18 point he detects the strong odor of alcohol.

19 Prior to that, there is no objective facts  
20 regarding impairment. He says there is something going  
21 on here. The circumstances are real weird, but that  
22 doesn't add up to impairment. The suggestion was made  
23 that maybe the defendant's a functioning alcoholic, and  
24 that could be true, but, similarly, if somebody failed

1 the field sobriety test and was an undiagnosed person  
2 with MS or some other malaise, you wouldn't infer that  
3 unless you knew those facts, so that could be something  
4 that's going on here, but we don't know that.

5 So based upon all the facts and  
6 circumstances, I find that there was a valid seizure by  
7 the officer. He spent at least seven and a half  
8 minutes with the defendant, there was no objective  
9 facts for the officer to then have him submit to the  
10 field sobriety testing. I feel at that point, the  
11 seizure went to a different level. That's without any  
12 objective reasonable basis. I.

13 Think I do want to comment on the Officer's  
14 testimony. I think it was extremely credible. I think  
15 he was extremely patient with the defendant. And I  
16 will say, anecdotally, that after the point in time  
17 that he initiates the field sobriety testing, it went  
18 way downhill for the defendant very quickly. But for  
19 all the reasons I've stated, I'm going to grant the  
20 petition to rescind, and that will be the order. I'm  
21 going to put the video that I watched back with the  
22 file with the clerk.

23 MS. NORTON: Judge, I will note for the record,  
24 and I'm not sure what direction Mr. Ramsell's office

1       wants to go with this, but we did tender a lab report.  
2       There was a search warrant that was obtained in this  
3       case, and the lab has been tendered, so. I just want  
4       that on the record.

5               THE COURT: Okay. So and you acknowledge receipt  
6       of the lab report?

7               MR. KUNOWSKI: Your Honor, I do. If I may have  
8       one minute, and I will come back about a future date.

9               MS. NORTON: I have to go next door. So I just  
10       assume give it a date right now, and if we need to  
11       change that date, we can do that.

12              THE COURT: Yeah. Let's give it a longer date.

13              MR. KUNOWSKI: Well --

14              THE COURT: On a Wednesday.

15              MR. KUNOWSKI: -- Your Honor, if that's the case,  
16       I'd ask leave to file a motion to quash arrest and  
17       suppress evidence within seven days and set it over for  
18       hearing.

19              THE COURT: Sure. What date?

20              MS. NORTON: May I be heard, Judge?

21              THE COURT: Sure.

22              MS. NORTON: I don't know what your -- Well, I  
23       guess you could quash and suppress the -- Whatever.  
24       Make whatever motion you want. If you are going to



1 make a motion on the search warrant, I would ask that  
2 it be a motion particular to the search warrant and not  
3 just a general motion to quash and suppress evidence  
4 because that doesn't get to the search warrant.

5 THE COURT: Okay. Well, they can file whatever  
6 motion they want, and you can file a motion to strike.  
7 I get what's going on, but let's get a date.

8 MS. NORTON: Well, I don't want to -- I mean, are  
9 we setting it for hearing or what are we -- Because I  
10 don't want to set it for hearing until we have a  
11 motion --

12 THE COURT: Let's put for status. Yeah, let's set  
13 it for status, and leave's granted to file whatever  
14 motions you want, but we will set a status date. You  
15 guys are here enough where I don't think it's going to  
16 be too inconvenient.

17 MS. NORTON: Do you want June 30th or --

18 MR. KUNOWSKI: Your Honor, could we do June 30th  
19 by Zoom if we're not able to just set it for hearing  
20 right now?

21 THE COURT: Sure. Yeah. And then I'll sign the  
22 order. I'm going to be in Glendale this afternoon, but  
23 I'll look for it in the 4015 que.

24 MS. NORTON: Actually, I'm sending it to you right

1       now, Judge. It's under your name. So I don't know how  
2       that works.

3               THE COURT: They are somewhere.

4               MS. NORTON: It should be coming to you directly,  
5       so.

6               THE CLERK: You should have a tab for orders to  
7       sign.

8               MS. NORTON: And I --

9               THE COURT: In this courtroom?

10              THE CLERK: Just a general one for you. Anything  
11       that is sent to you should go there.

12              THE COURT: All right.

13              MS. NORTON: And, Judge, I want to be clear on  
14       what I'm marking on the order, is it no reasonable  
15       grounds for the DUI arrest or -- Is that the basis of  
16       your order today?

17              THE COURT: Yes.

18              MS. NORTON: Okay. Thank you.

19              MR. KUNOWSKI: Thank you, Judge.

20              MS. NORTON: So that order is submitted, Judge.

21              THE COURT: All right. I'll look for it. 50/50  
22       chance I find it.

23                               (Which were all of the proceedings had  
24                               in the above-entitled matter.)

